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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA
GONZÁLEZ, FREDDY JOSE ARAPE RIVAS,
M.H., CECILIA DANIELA GONZÁLEZ
HERRERA, ALBA CECILIA PURICA
HERNÁNDEZ, E.R., HENDRINA VIVAS
CASTILLO, A.C.A., SHERIKA BLANC, VILES
DORSAINVIL, and G.S.,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

Hon. Sallie Kim

JOINT DISCOVERY LETTER BRIEF

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1 The parties submit this brief regarding outstanding discovery disputes. Lead counsel met and
2 conferred and complied with Section 9 of the District’s Guidelines for Professional Conduct.

3 **I. FACTUAL BACKGROUND & RELEVANT DEADLINES**

4 Plaintiffs seek a court order to remedy this Court’s findings related to non-responsiveness.
5 (Dkt. 249.) Plaintiffs assert the discovery issues raised are time-sensitive as they relate to a pending
6 summary judgment motion for which Plaintiffs will file a reply brief at 9 am on Friday, July 18, in
7 which they are permitted to introduce new material received through discovery after their motion was
8 filed. (Dkt. 181.)

9 The Court ordered Defendants to produce discovery in response to Plaintiffs’ RFPs 1 and 2,
10 seeking communications “regarding whether to vacate, partially vacate, or terminate the TPS
11 designations for Venezuela or Haiti” and “concerning the TPS periodic review process . . . to the extent
12 applied in whole or in part” to these decisions. (Dkts. 129, 135.) The Court ordered the search and
13 production of responsive communications for the date range January 20 through February 24, 2025
14 with limited search terms: [“Temporary Protected Status” or “TPS” or 1254a] AND [Venezuela],
15 [“Tren de Aragua” or “Tren de Agua” or TdA], [Haiti], or [vacat*]. Dkts. 135 & 132-1.

16 On May 23 and 27, 2025, Plaintiffs first raised to the Court their concerns that Defendants
17 were improperly withholding documents as non-responsive. (Dkts. 147 & 154, Notices of Defendants’
18 Non-Compliance with Discovery Order and Request for Emergency Relief.) Plaintiffs there sought
19 the production or logging of all responsive documents which hit on the search terms. In its response,
20 Defendants identified that they “worked diligently to comply with the Court’s order” but “faced
21 challenges in capturing the entire domain of documents,” and that any limitations in their production
22 “demonstrate[d] that Defendants continue to work diligently to resolve the discovery issues raised by
23 Plaintiffs[.]” (Dkt. 153.) Judge Chen ordered various initial remedies in response, Dkt. 161, and
24 referred all further discovery matters to the Magistrate Judge, Dkt. 164.

25 On June 10, 2025, the parties submitted a discovery letter brief regarding Plaintiffs’ concerns
26 that Defendants had not complied with the required production order and had withheld responsive
27 records based on purported non-responsiveness. (Dkt. 191.) Defendants maintained that they had
28 fulfilled their discovery obligations. (*Id.*) The Court denied without prejudice Plaintiffs’ request to

1 compel Defendants to produce a “hit report” logging documents that hit on search terms but were
2 withheld as non-responsive. (Dkt. 198.)

3 On June 20, 2025, the parties filed a new discovery letter brief regarding, among other things,
4 the non-responsiveness issue. (Dkt. 211.) The Court ordered Defendants to produce for *in camera*
5 review a sample of documents that hit on the search terms and were withheld as non-responsive. (Dkt.
6 220.) Specifically, the Court ordered Defendants to gather up to ten selected documents withheld as
7 non-responsive from each of five categories: a) Documents custodial to Secretary Noem; b)
8 Documents custodial to Corey Lewandowski; c) Documents custodial to any producing custodian
9 dated between January 20, 2025 through January 24, 2025, inclusively; d) Documents that hit on the
10 search term: [“Temporary Protected Status” OR TPS OR 1254a] AND [vacat*]; and e) Documents
11 that hit on the search term: [Temporary Protected Status” OR “TPS” OR 1254a] AND [Haiti]. The
12 Court permitted Defendants to exclude communications concerning press clippings or about press
13 releases; or family members of documents that hit on the search terms, but which do not themselves
14 hit on the search terms.

15 On July 8, 2025, in a Supplemental Order on Non-Responsiveness, the Court found that 16 of
16 the 40 sample “non-responsive” documents the Court reviewed *in camera* in response to the Court’s
17 order were “misidentified as nonresponsive.” (Dkt. 249.) The Court ordered their production or
18 logging by July 11, 2025. The Court further ordered Defendants to “submit an explanation of why [an]
19 email chain was categorized as both responsive and nonresponsive by July 11, 2025.” (*Id.*)

20 **II. PLAINTIFFS’ POSITION**

21 Plaintiffs seek long-delayed compliance with the Court’s order for the production of
22 communications of key decisionmakers concerning their decisions to cut TPS for over one million
23 people.

24 This Court’s *in camera* review of selected documents which Defendants are withholding as
25 non-responsive demonstrates that a substantial portion—from this set, at least 40%—are misidentified

1 as non-responsive and should have been either produced or logged from the outset.¹ (Dkt. 249.) This
2 is a shockingly high percentage and demonstrates that, ten days before Plaintiffs' final summary
3 judgment brief is due and nearly seven weeks after Plaintiffs first raised this issue before the Court
4 (Dkts. 147 & 154), Defendants were still inappropriately withholding numerous responsive
5 documents.

6 The declarations filed by Defendants concerning the searches of custodians Secretary Noem,
7 Corey Lewandowski, and the Executive Secretary (Dkts. 244-1 & 244-2) further confirm that
8 Defendants have taken an extraordinarily and inappropriately narrow view of responsiveness, and that
9 many documents are still being improperly withheld as non-responsive. The declarations show that
10 there were numerous documents from the custodial files of Mr. Lewandowski and Executive Secretary
11 Juliana Blackwell that hit on search terms yet were apparently deemed non-responsive and not
12 produced. Some of these are no doubt responsive as they are expressly referenced in other responsive
13 communications. For instance, while Defendants produced zero documents with Mr. Lewandowski as
14 custodian, the Weiland Declaration shows that there were 27-34 unique documents with Mr.
15 Lewandowski as custodian that hit the search terms (Dkt. 244-2); and other documents produced show
16 that some of these are clearly responsive (Dkts. 147-1 & 211-2).

17 Plaintiffs respectfully request that this Court order a prompt remedy for Defendants' expansive
18 withholding of responsive documents improperly deemed to be non-responsive. Specifically, in light
19 of this Court's Supplemental Order on Non-Responsiveness (Dkt. 249), Plaintiffs ask this Court to
20 order Defendants to re-review and log or produce all nonprivileged responsive documents that hit on
21 the Court-ordered search terms and are responsive despite having been deemed non-responsive by
22 Defendants. In a meet and confer, Defendants informed Plaintiffs that there are approximately 300
23 documents which have been deemed non-responsive. In order for Plaintiffs to review these documents
24 in advance of the summary judgment filing deadline, and in light of the extensively delayed production
25

26 ¹ Defendants informed Plaintiffs that they provided for in camera review 6 documents with Secretary
27 Noem as custodian though they did not hit the search terms, and none were found to be responsive by
28 this Court. Thus, this Court found that *nearly half* (16 of 34) of the documents which hit the search
terms and had been deemed non-responsive were actually responsive.

1 to date and the limited number of documents which require re-review, Plaintiffs ask this Court to order
 2 Defendants to produce all responsive nonprivileged documents and a privilege log by **Monday July**
 3 **14** at the latest.

4 Defendants today provided Plaintiffs with the 11 documents this Court identified as responsive
 5 that were not privileged. Plaintiffs agree with the Court’s finding that they are clearly responsive.
 6 Plaintiffs thus contend that no further clarification is necessary: The remaining documents withheld
 7 as non-responsive should be re-reviewed in accordance with the Court’s ruling, and produced or
 8 logged, without creating exceptions for documents Defendants view as “non-substantive.”

9 Plaintiffs also ask this Court to order that Defendants *not* redact nonresponsive portions of
 10 otherwise responsive documents. (See *infra* at 5-6.) This Court considered this issue in *Ramos*, and
 11 rejected Defendants’ contention that such redaction was appropriate. *Ramos v. Nielsen*, No. 3:18-cv-
 12 1554, Dkt. 49 (N.D. Cal. Aug. 1, 2018) (“Defendants may not redact documents based on a position
 13 that portions of the document are ‘non-responsive.’”).

14 Further, to aid in an understanding of the scope of the problem, and to minimize any further
 15 burden on the Court in resolving this issue, Plaintiffs ask this Court to order Defendants to identify
 16 the number of documents withheld as non-responsive that hit on each search term for each custodian
 17 (with a chart similar to that in paragraph 5 of the Weiland declaration, Dkt. 244-2, but with two rows
 18 added—to include i) the total number of individual documents which hit on the search terms (by
 19 custodian); and ii) the total number of these documents which were withheld as nonresponsive (by
 20 custodian).²

21 To the extent that Defendants contend that any of these remedies constitute discovery on
 22 discovery, discovery on discovery is warranted where Plaintiffs make specific showing of production
 23 deficiencies as has clearly been shown here. *Taylor v. Google*, 2024 WL 4947270, at *2 (N.D. Cal.
 24 Dec. 3, 2024); *Gosain v. Bergquist Wood McIntosh Seto, LLP*, 2022 WL 2439180, at *3 (N.D. Cal.
 25 July 5, 2022) (ordering party to verify RFP responses in light of initial failure to provide adequate
 26 responses).

27
 28 ² Defendants have *not* provided this information to Plaintiffs despite Plaintiffs’ requests.

III. DEFENDANTS' POSITION

To date, Defendants have expeditiously produced responsive and non-privileged documents in good faith, based on Judge Chen's orders. ECF Nos. 129, 135. Judge Chen made clear that discovery in this case was to be limited to substantive documents reflecting the Secretary's decisionmaking process related to the challenged Venezuela and Haiti determinations—and any limited discovery was meant to supplement the Administrative Record, not evolve into general civil discovery. ECF No. 129. Yet this Court found that many non-substantive documents, that show no intent or relation to the challenged TPS designations and were not considered directly or indirectly by the Secretary, should have been marked responsive. ECF No. 249. For example, NTPSA-DHS HQ_00000189, NTPSA-DHS HQ_00000406, NTPSA-DHS HQ_00000743, NTPSA-DHS HQ_00001217, are automated MS Office notifications indicating that an attorney commented on a document or was given access to a document. Defendants respectfully aver that it is unclear how an automated notification or email merely showing that people were working on a document, fits within the scope of limited discovery authorized by Judge Chen.

To be clear, Defendants acknowledge that there are some documents within the data set sent to this Court that should have been marked as responsive and either produced or logged as privileged—and Defendants will produce those documents with an updated privilege log by July 11, 2025, in accordance with this Court's order.³ But Defendants aver this small subset of documents does not indicate noncompliance or bad faith—if anything, it highlights the fact that reasonable minds can and will differ as to what is a responsive document in this case.

Also in response to this Court's order, Defendants acknowledge that documents NTPSA_USCIS_00000472 and 00001597 contain a similar portion of the same email chain in document NTPSA_PRIVID_000164, which was previously coded responsive, such that these

³ To the extent Defendants are producing documents with non-responsive portions, Defendants' position is that those portions should be redacted. Discovery in this case should not be a vehicle for Plaintiffs to obtain sensitive information (ex. law enforcement, FOUO, etc.) that would otherwise not be disclosed. Defendants are prepared to brief this further or provide document exemplars to the Court, if necessary. Moreover, Plaintiffs make no showing of why they need unresponsive sensitive information.

documents too should have been so coded despite the responsive portion of the document having already been produced.

Additionally, to ensure that Defendants correctly understand this Court's interpretation of Judge Chen's discovery orders and to inform any re-review of documents marked as non-responsive, Defendants respectfully request that this Court clarify its interpretation of Judge Chen's discovery orders. *See* ECF Nos. 129, 135. Specifically, Defendants ask this Court to articulate whether this Court views those orders as requiring the disclosure of non-substantive documents that hit on a search term pursuant to RFPs 1 and 2, regardless of whether or not the documents were considered directly or indirectly by the Secretary or those who compiled the administrative record for her review.⁴

Finally, Defendants respectfully request that any ordered re-review based upon this Court's articulated responsiveness standard be due no earlier than **Wednesday, July 16, 2025**. Although this is admittedly only a few days before Plaintiffs' reply brief is due, Defendants again respectfully aver that while some documents may have been marked responsive, Defendants have already turned over far more material than they believe Judge Chen's order requires, and that any additional matters disclosed will already have been substantively disclosed, or add nothing further to understanding the Secretary's intent in making the discretionary determinations at issue in this case.

⁴ A court may clarify an order to facilitate its implementation. *See, e.g., Kuang v. United States Dep't of Def.*, No. 18-CV-03698-JST, 2019 WL 718632, at *2 (N.D. Cal. Feb. 20, 2019). "The Supreme Court teaches that when questions arise as to the interpretation or application of an ... order, a party should seek clarification or modification from the issuing court, rather than risk disobedience and contempt." *Regents of the Univ. of Cal v. Aisen*, No. 15-cv-1766-BEN (BLM), 2016 WL 4681177, at *1 (S.D. Cal. Sept. 7, 2016) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949); *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945)); *see also Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1373 (9th Cir. 1981).

1 Date: July 10, 2025

Respectfully submitted,

2
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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing
Joint Letter Brief in compliance with Civil Local Rule 5-1 (i)(3).

Date: July 10, 2025

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/s/ Emilou MacLean

Emilou MacLean

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

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